

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE:

B-214652

DATE: December 4, 1984**MATTER OF:**

Fein-Marquart Associates, Inc.

DIGEST:

Protest that agency should have met its needs by converting protester's software system, which is being provided to the agency under a current contract, rather than by competitively procuring a commercially available, off-the-shelf system, is denied where agency performed requirements analysis and conversion study showing that competitive procurement would be less expensive, would provide faster delivery time, and would obtain less risky product.

Fein-Marquart Associates, Inc. (Fein-Marquart), protests the Environmental Protection Agency's (EPA) issuance of request for proposals WA 84-D376 for a commercially available, off-the-shelf software package for chemical data base management and chemical structure/substructure searching to be used in an International Business Machines (IBM) computer environment.

We deny the protest.

Fein-Marquart contends that it already has developed a similar system under another contract with EPA that could be converted to satisfy EPA needs in a superior manner from the standpoint of cost, delivery schedule, and government rights in software data. Fein-Marquart argues that EPA should satisfy its needs through Fein-Marquart's existing contract, rather than through a competitive solicitation.

EPA states that it carefully considered the alternative of satisfying its needs through Fein-Marquart's existing contract with EPA. According to EPA, the alternative was rejected for the following reasons.

The system developed under the Fein-Marquart contract would have required conversion for use in an IBM environment, would have needed substantial enhancement to provide necessary capabilities, and would have required testing and debugging. Additionally, it would have been necessary to

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develop software documentation in order to maintain the system. According to EPA, these factors would have resulted in a higher-risk system that would cost substantially more and that would have taken longer to deliver than an off-the-shelf system.

Concerning the more expansive software rights available to EPA under Fein-Marquart's contract, EPA states that it has no need for those rights.

We have consistently held that the determination of the government's minimum needs and the best method of accommodating those needs is primarily the responsibility of the contracting agencies. Our Office will not overturn an agency's determination of its minimum needs unless there is a clear showing that the determination has no reasonable basis. Baucom Janitorial Service, Inc., B-210216, May 31, 1983, 83-1 C.P.D. ¶ 584. Additionally, we have specifically found that the requirement of a commercially available product is an acceptable means of minimizing risks. See AUL Instruments, Inc., B-186319, Sept. 1, 1976, 76-2 C.P.D. ¶ 212.

EPA has provided substantial reasons for procuring a commercially available, off-the-shelf system, instead of modifying the system provided under Fein-Marquart's current contract. These reasons have been supported with a conversion cost analysis and a requirements analysis. Fein-Marquart has declined to rebut EPA's rationale and supporting documentation. Consequently, we find that Fein-Marquart has failed to demonstrate that EPA's decision lacked a reasonable basis.

We deny the protest.

Milton F. Jordan
for Comptroller General
of the United States